

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JEROME MARTIN,

Plaintiff,

Case Number: 04-40340

v.

HONORABLE PAUL V. GADOLA

KIMBERLY GADDIES, ET AL.,

Defendants.

/

**ORDER GRANTING PLAINTIFF'S REQUEST FOR VOLUNTARY DISMISSAL OF
COMPLAINT AND DENYING AS MOOT PLAINTIFF'S APPLICATION TO
PROCEED WITHOUT PREPAYMENT OF FEES AND COSTS**

Plaintiff Jerome Martin, a state inmate currently incarcerated at Camp Cusino in Shingleton, Michigan, filed a *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff sought leave to proceed without prepayment of the filing fee. *See* 28 U.S.C. § 1915(a)(1). This Court issued an order requiring Plaintiff to show cause why his complaint should not be dismissed pursuant to the “three strikes” provision of 28 U.S.C. § 1915(g).

Under the Prison Litigation Reform Act (“PLRA”), Pub.L.No. 104-34, 110 Stat. 1321 (1996), the Court may dismiss a case if the Plaintiff seeks leave to proceed without prepayment of the filing fee if, on three or more previous occasions, a federal court has dismissed the incarcerated plaintiff’s action because it was frivolous or malicious or failed to state a claim for which relief may be granted. 28 U.S.C. § 1915(g). Plaintiff has filed nine prior civil rights cases which have been dismissed for being frivolous, malicious, or for failing to state a claim upon which relief can be granted. *See* Martin v. MDOC, No. 96-151 (W.D. Mich. Aug. 15, 1996) (Quist, J.); Martin v. State

of Michigan, et al., No. 96-149 (W.D. Mich. July 23, 1996) (Quist, J.); Martin v. Haas, et al., No. 96-177 (W.D. Mich. July 15, 1996) (McKeague, J.); Martin v. River Rouge Police Department, No. 92-71213 (E.D. Mich. March 20, 2002) (Woods, J.); Martin v. Wayne County, et al., No. 91-74281 (E.D. Mich. Nov. 20, 1991) (Gadola, J.); Martin v. Lacey, et al., No. 90-70224 (E.D. Mich. March 9, 1990) (Zatkoff, J.); Martin v. Detroit, Child Custody Court, No. 89-73276 (E.D. Mich. Dec. 11, 1989) (Feikens, J.); Martin v. River Rouge et al., No. 89-73175 (Nov. 20, 1989) (Cohn, J.); Martin v. Detroit, et al., No. 89-72549 (E.D. Mich. Oct. 23, 1989) (Zatkoff, J.).

A plaintiff may maintain a civil action despite having had three or more civil rights actions dismissed as frivolous if the prisoner is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).¹ In response to the Order to Show Cause, Plaintiff fails to allege that he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). Instead, Plaintiff asks that his complaint be returned to him without a ruling. The Court construes Plaintiff’s response as a request for voluntary dismissal of this action. Federal Rule of Civil Procedure 41(a) permits a plaintiff to dismiss an action without leave of the adverse party or the court at any time before service by the

¹ Section 1915(g) provides, in pertinent part:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this subsection if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g).

adverse party of an answer or of a motion for summary judgment. In the pending case, Defendants have not yet been served with the complaint. Therefore, Plaintiff is entitled to voluntary dismissal of his complaint.

Accordingly, the Court **GRANTS** Plaintiff's request for voluntary dismissal of his complaint [docket entry 5] and **ORDERS** the complaint **DISMISSED WITHOUT PREJUDICE**.

The Court further **ORDERS** that Plaintiff's Application to Proceed Without Prepayment of Fees and Costs [docket entry 2] is **DENIED** as moot.

s/Paul V. Gadola

PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Dated: May 10, 2005

Certificate of Service

I hereby certify that on May 11, 2005, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Jerome Martin.

s/Ruth A. Brissaud

Ruth A. Brissaud, Case Manager
(810) 341-7845